

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

HONORABLE CURTIS E.A. KARNOW, JUDGE PRESIDING

DEPARTMENT NUMBER 304

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**CERTIFIED
TRANSCRIPT**

COORDINATION PROCEEDING

SPECIAL TITLE [RULE 1550(b)]

Case No.: CJC-17-004955

CALIFORNIA NORTH BAY FIRE CASES

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Reporter's Transcript of Proceedings

Friday, December 28, 2018

REPORTED BY:

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P R O C E E D I N G S

Friday | December 28, 2018 | 2:07 p.m.

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THE COURT: Good afternoon.

So for two o'clock we have a preference motion. I didn't see any oppositions.

MR. PITRE: Good afternoon, Your Honor, Frank Pitre.

If we could, Your Honor, if it is not too much trouble for the Court, we would request that we have the CMC.

THE COURT: The trouble is that the CMC was set for three o'clock and I don't know if everybody realizes it would happen earlier than that. If I had it down and completed it in 45 minutes, people stroll in the door or get on the telephone at three o'clock only to be told it already happened, there's a due process problem.

MR. PITRE: Understood, Your Honor.

THE COURT: I have read all the CMC materials, so I'm sensitive to some of those issues.

MR. PITRE: Your Honor, the only issue that we would raise is really one that deals with the motion before His Honor as it relates to CMO number six.

They're interrelated, so if the Court wants to

1 hear both at the same time, I just didn't want this
2 Court to get the impression that because we did not file
3 a formal opposition to the preference motion, that we
4 did have some concerns as to how it would work.

5 THE COURT: I understand and I know what they
6 are. I don't even have to read between the lines.

7 MR. PITRE: There you go, Your Honor.

8 THE COURT: I can just read the lines
9 themselves.

10 No, the order will issue -- both the CMO and
11 the order on the preference motion will issue after
12 we've finished all of the hearings and they'll have to
13 go out today because today is my last day for a couple
14 of weeks.

15 MR. PITRE: As long as Your Honor -- if I may.
16 I apologize.

17 THE COURT: Go ahead.

18 MR. PITRE: As long as we can have the Court
19 reserve its ruling on the order on the motion for
20 preference until they're both taken together, we'll take
21 it however the Court wants.

22 THE COURT: The order is not going to issue
23 until after I've had the case management conference.

24 MR. PITRE: Very good.

25 THE COURT: If that's helpful.

1 Is Mr. Singleton here?

2 MR. SINGLETON: Yes, Your Honor.

3 THE COURT: How are you?

4 MR. SINGLETON: I'm well, Your Honor. How
5 about yourself?

6 THE COURT: I'm good.

7 There's no opposition to the motion, so my
8 tentative, obviously, is to grant it, but there are a
9 couple of issues that are not addressed in the motion
10 that we have to talk about -- I'll hear from PG&E in a
11 minute -- for example, a trial date, what county it
12 should occur in.

13 Do you have any thoughts about any of these
14 things?

15 MR. SINGLETON: Yes, sir.

16 I think 120 days would be April 29th, we
17 believe that would be an appropriate date for the Court
18 to set.

19 In terms of the county, I understand
20 Your Honor is not available. Obviously, our first
21 choice would be to be in front of Your Honor.

22 THE COURT: I'm not available at all in any
23 case after the middle of January because a different
24 judge will be taking all of these cases.

25 MR. SINGLETON: Understood, Your Honor.

1 What I think we would request is to have the
2 case transferred to Sacramento for trial. That would be
3 much more convenient for our client. I know the Court
4 has seen the papers. She is in very poor health.

5 Sacramento was the coordination point for the
6 Butte fire. Obviously, it is certainly capable of
7 handling a complex case, and so we believe that it is
8 within the Court's powers to send it to Sacramento and
9 we think that would be the best for all parties.

10 It certainly would be most convenient for the
11 witnesses. As I'm sure the Court is aware, the
12 witnesses who will be testifying from Cal Fire and some
13 of the other agencies are in counties that are adjacent
14 to Sacramento. We obviously haven't had a chance to
15 speak with every witness, but some of the ones we have
16 spoken with would prefer a trial in Sacramento.

17 So for the benefit of the parties and the
18 witnesses, we think Sacramento is where this particular
19 trial should occur.

20 THE COURT: Thank you.

21 Does PG&E have any views on this?

22 MS. HERNANDEZ: Good afternoon, Your Honor,
23 Damaris Hernandez.

24 We agree that Mr. Singleton that April 29th
25 should be the date for trial.

1 I think we think the case should happen here
2 in San Francisco. Again, we agree with Mr. Singleton
3 that we prefer it would be in front of you, but since
4 that is not possible, we think it's more efficient for
5 us to have it here. It's more convenient for us.

6 And just as we discussed in the last CMC, it
7 makes sense, since the cases are coordinated here, that
8 it happen here in San Francisco.

9 THE COURT: If you could get back to the
10 podium, please.

11 Your convenience is not perhaps the most
12 important factor. The convenience of the plaintiff
13 herself is important in the sense that she might or may
14 not have trouble moving. I don't know what that status
15 is, but my main concern I think is probably convenience
16 of witnesses and things like that.

17 Do you have any view as to where the witnesses
18 are likely to come from?

19 I mean, we have PG&E folks of course. Maybe I
20 should assume that they're here in San Francisco. I
21 don't know. Do you have a view as to what the
22 unaffiliated witnesses, where they might be coming from,
23 third party witnesses, for example?

24 MS. HERNANDEZ: I think the third party
25 witnesses will probably be from San Francisco.

1 THE COURT: Who would those be, probably?

2 MS. HERNANDEZ: So the vegetation management,
3 Lobo, it's like Atlas. It's an alleged vegetation
4 contact power line case, so it would be third party
5 contractors who did patrolling, and it would also be the
6 PG&E folks who actually are involved in monitoring the
7 vegetation work we do.

8 THE COURT: Those are all residents closer to
9 San Francisco than they are to Sacramento?

10 MS. HERNANDEZ: I think so, Your Honor.

11 THE COURT: We don't really know, do we? No
12 one knows. It was never briefed.

13 MS. HERNANDEZ: It was never briefed.

14 THE COURT: Right, no one has a clue.

15 Fortunately, San Francisco and Sacramento are
16 not too far apart from each other, but we actually have
17 no basis to decide -- there's nothing in front of me
18 that decides or even helps decide whether it should be
19 San Francisco or Sacramento, except PG&E is across the
20 street, basically, right?

21 If I could speak with Mr. Singleton just for a
22 moment.

23 Thank you, ma'am. I appreciate your help.

24 There's nothing in here that helps me decide
25 this. Where does your client live, what county is she?

1 MR. SINGLETON: She lives in Nevada County,
2 which is very close to Sacramento. The witnesses that
3 we intend to call will be local there. Obviously, I'm
4 sure PG&E --

5 THE COURT: For example, what sort of
6 witnesses would those be?

7 MR. SINGLETON: There will be damages
8 witnesses who will be in a position to comment on what
9 the property looked like before, what the property
10 looked like after. Those will all be local.

11 My understanding of where the vegetation
12 management contractors are is that they are local, the
13 individuals who actually perform the work. Typically,
14 that's the way it's done.

15 In handling these cases, I've never seen it
16 done somewhere else where, for example, you have
17 contractors from San Francisco who would drive several
18 hours to perform work in Nevada County. Typically,
19 they're local people that are hired to do it. I believe
20 that's what we'll find here, but obviously if that's
21 something the Court wishes to reserve judgment upon and
22 have us brief the issue and try to find out, we can
23 certainly do that.

24 THE COURT: I think probably everybody would
25 like this just decided one way or another as soon as

1 possible. You would; probably PG&E would. I appreciate
2 that. Thank you, sir.

3 Yes, ma'am.

4 MS. HERNANDEZ: Your Honor, to the extent that
5 Your Honor wishes it to be in Sacramento, I think we
6 would be amendable to that. We can get our witnesses
7 there and we can do it for the convenience of the
8 plaintiff.

9 THE COURT: Okay.

10 I'll devise an order. It will be brief and
11 we'll have it in Sacramento.

12 The actual date, I may set it down for
13 April 29th, but I think I need to contact the presiding
14 judge in Sacramento to find out what their system is for
15 assigning dates on cases and so on. I want something
16 that fits with what they're doing.

17 There are other issues with respect to how
18 discovery is going to get handled between now and then,
19 but my guess is we'll have a more detailed discussion
20 about that at the CMC; I think probably.

21 I think would -- I recognize -- at least I'll
22 just speak for myself -- which is that preference
23 motions like this present an impossible situation for
24 everybody. It's impossible for the plaintiff. It's
25 impossible for the defendants. The idea that we can

1 have as prepared a trial in 120 days as we could with a
2 more extensive time period is really not feasible.

3 What the legislature has told us,
4 understandably, is that it's better to have an imperfect
5 process and do what we can within 120 days rather than
6 run a serious risk of a plaintiff not having his or her
7 day in court at all. That's the judgment call the
8 legislature has made.

9 But the consequence is going to be that a
10 number of things that we would normally want to get done
11 in preparation for a trial, we're not going to have the
12 time to do it. It's never going to happen. We can talk
13 about that in a little bit more detail at the CMC, about
14 how we're going to organize preference motions and
15 particularly the discovery that has to be done in
16 advance of that.

17 With that being said, I think we'll resume in
18 about 45 minutes. We will have our three o'clock CMC at
19 that point. That way I'll know that everybody who wants
20 to participate is available to either listen or come in
21 the door.

22 I'd like to get it done sooner, too, because I
23 know it's Friday afternoon and people want to get back
24 to their families, but I think it's just not fair to
25 people who are counting on this starting at

1 three o'clock to start without them.

2 (Recess taken 2:18 p.m.)

3
4 CASE MANAGEMENT CONFERENCE | 3:00 P.M.

5 THE COURT: Good afternoon again.

6 I believe we have exactly the same people,
7 don't we? Oh, well.

8 Let me just give you a couple of tentative
9 thoughts on some issues that are presented by the
10 various papers, and then I'll turn it over to the
11 attorneys for discussion.

12 With respect to the Sulphur fire, we've
13 already discussed this and there's no reason to shift
14 gears at this point. We're going to proceed with the
15 Atlas fire first.

16 With respect to the suggestions made by the
17 Singleton firm, which are referred and summarized to
18 some extent in exhibit C of the CMC statement, I reject
19 the suggestions. I think it's confusing and
20 counterproductive to go down that road.

21 I would remind the Singleton firm that we have
22 an orderly process here in terms of getting CMC
23 statements in to the Court and people are simply going
24 to have to do a better job in terms of coordination in
25 advance. So if the Singleton firm or indeed any

1 attorney representing a plaintiff has concerns or issues
2 or wants things discussed in a CMC statement, it may
3 just be necessary to back up and start a little bit
4 earlier than ordinarily what's going on.

5 These things are due three days in advance,
6 and that means that sometimes you may have to start ten
7 days in advance or something like that to get the ball
8 rolling and have the discussion that you need so that
9 your views can be represented and contested if necessary
10 by other attorneys.

11 There's nothing wrong with having sort of a
12 contest or different viewpoints in the CMC statement.
13 That's fine. In fact, it can be very healthy, but to
14 have separate documents lodged is not good, and to have,
15 for example, a document sent in on December 27th is not
16 good at all. It is just confusing and it needs people
17 looking at -- people seeing documents and ideas and
18 positions during a time period where it's impossible to
19 respond to them in writing and that gets difficult.

20 If it were just the case with a couple of
21 lawyers, we would have plenty of time in the case
22 management context to go through everything orally and
23 to have people discuss things orally and to give
24 everybody all the time they want to speak orally.

25 But in this case like this and other cases

1 involving many lawyers, most of the work actually has to
2 be done in writing because there's no way to say
3 everything that you have to say and be able to respond
4 to it orally in the case management context.

5 I'll stop there and open it up for any
6 comments and then we'll talk more specifically about
7 CMO5 and CMO6, so if you have comments about those
8 things in particular, just hold off for a few minutes
9 while I pause just to get any reactions or comments from
10 anybody who'd like to talk about the topics that I've
11 just alluded to.

12 Yes, sir.

13 MR. SINGLETON: Your Honor, just as -- so I
14 understand what is being rejected.

15 One of the things that we asked for was the
16 right to do discovery on behalf of Ms. Fowler. Is that
17 something that's being rejected or is that something
18 we're going to discuss going forward?

19 THE COURT: Well, that specifically is
20 something which is going to have to be coordinated.

21 Obviously, you need to do discovery specific
22 to her case. There's no question about it, but I don't
23 want to have PG&E getting all sorts of discovery demands
24 from you without the other lawyers in the case having --
25 especially lead counsel in the case having an

1 opportunity to look at it and try to coordinate.

2 So, for example, let's just hypothesize that
3 you wanted to take a PMK deposition on vegetation
4 management of PG&E. Well, if it just got -- simply came
5 out of your office directly to PG&E without the ability
6 of the other lawyers to coordinate on that, we would
7 have a real problem.

8 So you need -- this case, like any case, has
9 to work through leadership and you have to coordinate,
10 which means it's going to take maybe a couple of days or
11 it's going to take a little bit more time to get that
12 done. I'm going to encourage the other lawyers to act
13 very rapidly in your particular case because of the
14 deadlines that you're now under.

15 But these things have to be coordinated. We
16 can't three, four -- let's say we had four or five or
17 six preference cases. I see notes in here that suggest
18 that you might file up to 15 different preference
19 motions. They could be motions that pertain to multiple
20 fires -- to a variety of different fires. It's
21 certainly conceivable. It could start really unwinding
22 all the coordination that we have here if those weren't
23 coordinated through leadership, so that's what has to
24 get done.

25 There may be disputes between you and

1 leadership on that. That's possible, and those will
2 simply have to be resolved by the Court.

3 MR. SINGLETON: Your Honor, I understand what
4 the Court is saying.

5 I think the concern we have is this: In the
6 event that other motions were filed and this was
7 something that affected other fires, I can see that
8 issue, but this is a single discrete fire, Lobo, and
9 there's only two groups that have actual plaintiffs in
10 it, my group and the Adler, Fox, Sieglock group.

11 As the Court said, it is -- I believe the
12 Court used the word "impossible"; preferences are an
13 impossible situation for the parties under the best
14 circumstances. If we have to coordinate through
15 leadership, if we can't serve our own discovery, if we
16 can't meet and confer, there's absolutely no way we can
17 get the case ready for trial.

18 So that is a fundamental denial of due process
19 to Ms. Fowler, who, as the Court has recognized, has
20 Stage IV carcinosarcoma and is dying. There is
21 absolutely no reason for us to not be allowed to serve
22 the discovery directly. If the concern is duplicative
23 discovery, then obviously --

24 THE COURT: It's not just duplicative; it's
25 uncoordinated that's part of the protocol.

1 It may well be, for example, I can imagine a
2 lot of discovery demands that raise no issues. For
3 example, let's say there is a deposition of a person who
4 knows about a certain piece of vegetation or a certain
5 pole or a certain specific area that is unique to your
6 case.

7 Well, we can tell in about four and a half
8 seconds in maybe a two-minute phone call between you and
9 leadership that that doesn't pose any issues at all,
10 right? No one else needs to go to that deposition
11 necessarily; or people who might want to, they can be
12 alerted to it, but that's probably not going to upset
13 any applecarts whatsoever.

14 So that's a phone call. It might inject
15 another couple of hours of delay in your ability to get
16 a deposition notice out.

17 On the other hand, I can imagine the PMK of
18 a -- a corporate PMK of PG&E that has to do with, you
19 know, topics like tell me everything about your policies
20 about everything -- I'm exaggerating here grossly just
21 to make a point -- all your policies about forest
22 management, all your policies about hiring third party
23 contractors, all your policies about -- so on and so
24 forth.

25 At that point it's going to cause tremendous

1 chaos and that needs to be coordinated. That will take
2 longer to set up.

3 MR. SINGLETON: I understand completely, Your
4 Honor.

5 So would it be possible to have a situation
6 where we can serve discovery that relates only to the
7 Lobo fire and everything that involves anything broader
8 can be done through leadership?

9 Our concern is --

10 THE COURT: I just don't know how to
11 articulate that line. I don't know how to write that
12 one up.

13 MR. SINGLETON: The way that I think it would
14 be done, Your Honor, as an example is to grant
15 Ms. Fowler's counsel the right to do discovery relating
16 solely to the Lobo case. If it relates to any other
17 cases, then it would have to be coordinated through
18 leadership.

19 But our concern is this: For our experts to
20 be ready and for them to be deposed -- and I would
21 imagine that will happen in about two months -- they
22 need, for example, the Cal Fire reports. They need the
23 opportunity to inspect the evidence. Thus far, we're
24 seven months after those reports have been prepared and
25 we still don't have them.

1 We need the ability to file a motion to
2 compel. We asked leadership to file it. It was filed,
3 then it was taken off without our knowledge and three
4 months -- without our consent. Three months later we
5 still don't have it.

6 I understand the meet and confer process is
7 going on and, certainly, that's commendable, but it's
8 been seven months and we need it. And the concern that
9 we have is we're working at different paces here.

10 Now that we have this granted, there is a fire
11 under us to get this case ready to go. If we're not
12 ready, that comes back on us, not leadership, and our
13 client has hired us and wants us to represent her. If
14 we're not allowed to do discovery, we can't do that.

15 So I completely understand, and if there's any
16 issue that relates to any case other than Lobo, I
17 completely have no problem with going through
18 leadership; but in terms of our getting this case ready,
19 filing the request for productions, the notices of
20 depositions, the special interrogatories, and requests
21 for admission that have to be filed, it will inject an
22 unnecessary element of delay in an already, to use the
23 Court's term, impossible progress -- process if we're
24 required to do that.

25 So I would simply ask for the right to conduct

1 discovery on her behalf.

2 THE COURT: You know what you want now, pretty
3 much, right, at least in broad terms?

4 MR. SINGLETON: We know certain things, but we
5 need the Cal Fire report, and that's why we need to be
6 able to file that. Again, I don't know if that's an
7 issue the Court is going to raise now or later, but
8 we've asked for permission to file that motion to
9 compel.

10 THE COURT: Let me rephrase my question.

11 MR. SINGLETON: Sure.

12 THE COURT: You know now the sorts of
13 discovery that you would want to issue to PG&E and you
14 realize that you're basically going to have about one
15 wave of written discovery -- time for about one wave of
16 written discovery, interrogatories, document demands,
17 RFAs, and things like that. That's about as much time
18 as you'll have, and then you're going to do some
19 depositions and that will probably eat up the amount of
20 time.

21 The point I'm making is you know now pretty
22 much what written discovery and depositions you want or
23 at least within a week or so, very soon, you can figure
24 that out, right?

25 MR. SINGLETON: We know some of it, but we

1 won't know the majority of it until we get that Cal Fire
2 report. It's the road map to how to do the case, which
3 is why it's so critical. That's why we need that
4 document, why we've been trying to get it now for seven
5 months, and why we're asking the Court to allow us to
6 serve a motion to compel.

7 That way, if they have any kind of a
8 legitimate issue, if they're going to try to assert some
9 type of governmental privilege, which I think the case
10 law is very clear it wouldn't apply here, but if they
11 want to assert it, that's fine. The Court can make a
12 decision.

13 But the problem is leadership has been meeting
14 and conferring with us not involved with the various
15 counties for seven months and we still don't have the
16 reports or access. We need to have that happen
17 immediately.

18 So one of the things that we're asking for is
19 the right to file a motion to compel the Cal Fire report
20 in Lobo and inspection, and we'd like an order
21 shortening time on that so that it can be done post
22 haste.

23 But, again, setting depositions, these are the
24 kind of things that we need to be able to do. Certainly
25 we'll ask other people. If they're interested, we'll

1 try to accommodate everyone, but the number one concern
2 here has to be getting this case worked up for the
3 preference plaintiff, who is dying.

4 THE COURT: Thank you. I appreciate that.

5 Others wish to be heard on this topic?

6 MR. BAGHDADI: Your Honor, if I may be heard
7 briefly.

8 THE COURT: Of course.

9 MR. BAGHDADI: Good afternoon, and may it
10 please the Court, Khaldoun Baghdadi.

11 The entire process that the Court just
12 outlined for Mr. Singleton, the confusion, the potential
13 chaos, the need to coordinate, is exactly what we tried
14 to do with the preference process.

15 Since August we established a preference
16 committee, circulated a protocol, wanted to obtain and
17 elicit the orderly and efficient exchange of information
18 so that we would be avoiding these specific conundrums
19 because never would I ever want to stand as an officer
20 of the Court and say Ms. Fowler shouldn't get her day in
21 court, but the process by which that is decided should
22 follow some coordination.

23 What we have in this case is 50 firms that
24 have agreed to a coordinated process in obtaining the
25 information for preference. Do we have the information

1 necessary, which fires are we talking about, how can we
2 exchange this information in an orderly fashion, how do
3 we trigger a meet and confer process, could there be
4 more than one case that would qualify as a preference,
5 which we could then use as a bellwether?

6 And in that process what we've done is told
7 our constituent law firms and some of my own clients, we
8 understand what you're going through. We know you've
9 got a client who might be a 36(a) mandatory preference,
10 but we need to do this in an orderly fashion so that we
11 don't just rush the Court.

12 What happened here is in this specific motion
13 that was before the Court, there was a steady refusal to
14 participate meaningfully in the preference protocol
15 process and the motion followed. We then filed our case
16 management statement and sought to be heard on calendar
17 at the same time because we don't want to stand
18 substantively in the way of anybody under 36(a), but
19 cannot have a situation where the JCC process is
20 rendered meaningless when all you have is a series of
21 uncoordinated preferences.

22 We must now turn back to our constituents and
23 say we want this protocol, we want this process, we want
24 to be able to have a seven-day meet and confer period
25 with PG&E. Why? So that we can know we've got four

1 Atlas preferences, we've got 30 preferences that we
2 could be filing.

3 The specific issue you just encountered here
4 at this podium from Mr. Singleton is exactly what we
5 were trying to avoid, that the coordination, not just
6 apply to discovery but to preferences as well; and not
7 at the risk of someone losing their substantive rights,
8 but that the decision to grant that preference be
9 considered in addition to others as part of the broader
10 case management plan, which this Court is vested with
11 the power to do under the rules of court.

12 That's just the observation I wish to make.

13 And so, the coordination of discovery, once we
14 start creating separate tracks for every attorney that
15 wants to file 27, 28 preference motions, our job as
16 liaison and lead to bring this in to you with the issues
17 teed up, with the disputes focused, becomes untenable
18 because the constraints imposed by due process under
19 36(a) at some juncture have to yield to the procedural
20 considerations that any preference be ruled upon and
21 addressed according to an orderly protocol.

22 So we cannot coordinate any discovery if we
23 have a rush on preference motions, which I fear may
24 follow, when we have another person saying, well, I've
25 got a Pocket preference, I want to conduct my own

1 discovery on Pocket, Your Honor, it won't have anything
2 to do with broader fires, just Pocket.

3 Well, we got coordinated in San Francisco on
4 the basis that the fire may have happened in Nevada
5 County, but the decisions we contend that led to it --

6 THE COURT: Just one moment.

7 (Interruption.)

8 THE COURT: Is somebody on the telephone?

9 MR. BAGHDADI: The decisions that led to the
10 fire be it vegetation management, risk management,
11 corporate enterprise, took place here in San Francisco.

12 Eventually we're going to have be getting to
13 corporate discovery, as we work with PG&E to roll out
14 production of evidence.

15 Now, we know it would be need to be expedited
16 for preference cases, but we fear that enabling a
17 preference motion to proceed in the absence of a broader
18 coordination process is going to make it very difficult
19 if not impossible for us to continue in that
20 coordination process.

21 THE COURT: Well, the plan that you have in
22 the proposed CMO, the net of it is, I think, and it
23 probably has to be that a certain process is gone
24 through, but at the end of the process, if a plaintiff's
25 counsel believes that they need to file a preference

1 motion, they file it, right?

2 MR. BAGHDADI: Correct.

3 THE COURT: We're not going to stop anybody
4 from filing a preference motion.

5 MR. BAGHDADI: Nor can we.

6 THE COURT: Nor can we. We can't do that.

7 MR. BAGHDADI: Correct.

8 THE COURT: So the issues are going to come
9 up.

10 I mean, the issue that we have today is a
11 foretaste of possible issues that we're going to have
12 coming up.

13 So just to focus on today's specific issue,
14 the Cal report on Lobo, the request has been made that
15 at least that motion get teed up, we go ahead and have
16 that motion. What do you think?

17 MR. BAGHDADI: Well, you've got the attorney
18 general's office, which we've been coordinating on.

19 And we did file a motion, as the Court is
20 aware, and it drew an objection and we were able to
21 reach an accord with them.

22 The problem specifically with Lobo is that the
23 Nevada County district attorney has not responded as of
24 yet since that case could be potentially under criminal
25 investigation.

1 We obtained an agreement to share materials
2 and evidence on Atlas, Norrbom, Adobe -- the majority of
3 the fires. And indeed, the process is such that when
4 we're dealing with over a dozen fires, at some times we
5 need to be systemic about the approach as opposed to
6 making a motion to compel on one discrete issue.

7 The AG's level of cooperation may change if
8 they're faced with a Lobo motion; but perhaps by going
9 through our protocol process we learn there's more than
10 one Lobo case that is suitable for preference or there's
11 more than one Sulphur case.

12 Before we unleash every preference motion as
13 it happens, could we have perhaps an orderly
14 coordination of that so that if it's not this Court,
15 whomever it is, is not inheriting more swipes at the
16 preference process so that we can then prioritize and
17 tell the attorney general, listen, we've got three
18 preference cases. That case is set for trial per 36(a).
19 It will not be moved.

20 We need this material or we have to file the
21 motion. We can renew the motion. We obtained their
22 agreement to refile and renew it. We have no problem
23 doing that, so once we create -- I apologize.

24 THE COURT: No.

25 MR. BAGHDADI: Once we create separate tracks

1 for every person who decides not to participate and then
2 file a motion of their own, we cannot deliver what
3 you've asked us to do, which is get this case ready for
4 trial and bring it in through trial or settlement. We
5 won't be able to do that, sir.

6 THE COURT: It's a very difficult situation.

7 I think there is a federal judge who, within
8 the last month and a half or something like that, if I
9 recall correctly, denied a preference motion on the
10 basis of the fact that it was part of what I'll call a
11 coordinated action, maybe it was an MDL or something
12 like that, and on that basis denied the preference
13 motion. I found that interesting.

14 So it's unlikely something like that will
15 happen in state court. We have the statute.

16 And I think what you're suggesting, if I
17 understand it correctly, is that with respect to this
18 motion, Cal Fire or some other discovery motion, which
19 is thought to be urgent by an attorney because, for
20 example, they have made a preference motion and it has
21 been granted, the way to handle it is in the first
22 instance to go through leadership, get it coordinated,
23 give that some time to work out, whatever that is, if
24 it's a week, whatever that time period is, it has to be
25 a fairly short fuse.

1 And if that attorney is then frustrated by the
2 reaction that comes from you and your colleagues sitting
3 at that table, then that attorney can go to the judge
4 and say, you know, it's not working out with these
5 people, I've tried to coordinate with them and they
6 think this is the wrong time to bring this motion for
7 whatever reason, they may have good reasons for that
8 position, but I need it now because I have 100 days left
9 to finish and that gets brought to the judge.

10 Is that your view as to how it works?

11 MR. BAGHDADI: My view is as CM01
12 contemplates, if any lawyer for any client feels that
13 their interests aren't being adequately represented,
14 they can come to the Court.

15 We are given the position of leadership not
16 because we drew a short straw; because we demonstrated
17 with the Court that we're trying to compete with the
18 interests of all our clients for all the fires versus
19 the interests of one lawyer and his or her own.

20 And even the coordination process of
21 preference -- and I understand that motion was denied on
22 the basis of its substantial interest in the litigation
23 as a whole was defined as the broader litigation as a
24 whole as opposed to that one case.

25 I don't believe 36(a) enables such balancing.

1 I do believe that the Court's inherent authority would
2 enable that motion to be continued and considered then
3 on its substance and on its merits as part of a broader
4 CMO process for preference to avoid that very issue.

5 I see nothing in the case law, be it Fox or
6 otherwise, where the Court's inherent authority or under
7 1540 or 1541 could say I see what you've got here. I
8 think you've satisfied the elements; however, under my
9 inherent authority, I'm going to continue your hearing
10 because I don't know what else is coming down the pike,
11 I don't know who's going to be handling these, and if
12 there is more than one preference motion for the same
13 court or county, it would be nice to know that before we
14 start calling other judges to transfer. That's where I
15 could come down on this.

16 As for the coordination of discovery
17 specifically, Your Honor, the process is working. Is it
18 working as fast as I would like? Absolutely not. I
19 would like to have more, but in terms of the substantial
20 completion of document discovery, which we've been
21 through in PG&E's backup tape system, which I believe is
22 on a Betamax or some other novel technology that's being
23 used, we're going to need to get the cases ready.

24 If there are preference motions, more than
25 one, we want to be aware of them and we want to be able

1 to effectively dedicate our time and resources to them
2 so that it is not haphazard.

3 So the issue that you raised with
4 Mr. Singleton is spot on. It's exactly why we want a
5 CMO6 heard, so that any preference motion be considered
6 part of that broader analysis and that once preferences
7 are decided, we can accommodate the discovery of those
8 cases. If we've got three preferences in Sulphur, we've
9 got to activate on Sulphur more so than we are already,
10 because, candidly, our focus right now is Atlas because
11 we want to be ready for trial in September.

12 THE COURT: It's a long-term problem, but I
13 think about 5 percent of the population in California is
14 75 and older, so 5 percent of the caseload. You know,
15 you can come up with your own numbers. There are a lot
16 of cases here, so we're talking about a lot of potential
17 preference motions coming down.

18 And the risk, number one, that's a very
19 serious problem for those particular plaintiffs,
20 extremely serious, but it's also a deep threat to the
21 coordination of these cases and the ability to manage
22 these cases.

23 I appreciate your thoughts. Thank you, sir.

24 MR. BAGHDADI: I understand Mr. Pitre had --

25 MR. PITRE: Just one thought, Your Honor.

1 This Court is not the first court that's had
2 to deal with this issue. Other state courts have had to
3 deal with this issue. We felt that their hands were not
4 tied by CCP 36 in that 1504 gave them the ability to
5 manage a case in a way where the court could consider
6 preference cases along with test cases, so that if a
7 case was tried and it was determined that we needed to
8 grant a preference, we took preference cases, we mixed
9 them in with test cases so when that case got tried, it
10 served as benchmarks that could provide the persuasive
11 authority that this Court recognized when it issued CMO
12 number four.

13 And if I could just take a brief moment, what
14 was done in the Butte case is a motion for preference
15 had been filed; however, what the judge wanted is the
16 judge said, if I'm going to try a preference case, it
17 seems to me that that's the prime opportunity to also
18 bring in test cases, because then a test case or a
19 variety of types of damages of cases could then be used
20 to establish a matrix, which would then be used to
21 resolve then 2000 to 3,000 different plaintiff cases.

22 So the plan that this group had was to go
23 through preference protocols, see what we have. Now,
24 the difference between Butte and what we have here is we
25 have 17 fires. So, ideally, in terms of an overall

1 management plan, we're taking a look at all the various
2 preference cases and which fires that they impact.

3 We then blend in, to the extent that we don't
4 have representative cases of some of the claims, test
5 cases, but it allows -- it allows us to develop an
6 overall plan that then can be used to resolve all cases.

7 If all we do is try one case and it's a
8 preference case, it teaches us nothing.

9 And the problem that I see, Judge, is -- I
10 want to come back to in the Butte case, the Court
11 continued the hearing on the preference motion because
12 the concern was that we were going to waste time with
13 just preference cases.

14 The other thing that I think is very important
15 about the Butte case is the preference motions, from a
16 timing standpoint, were not brought until after
17 substantial completion of discovery to avoid the issues
18 that Mr. Baghdadi and you, Your Honor, addressed with
19 Mr. Singleton.

20 And let me give you an example. The Lobo is a
21 tree line case. Vegetation management is at issue. If
22 we're looking at this case from the standpoint of all
23 the claims that are asserted in the master complaint, we
24 have to look at a variety of different claims being
25 asserted, including a claim for punitive damages.

1 Now, the last time we came before the Court,
2 the plaintiffs' committee submitted to the Court an
3 overall plan detailing all the witnesses that they
4 believe would be required in a tree line contact case,
5 and the discovery -- we actually had times for each
6 witness.

7 If we take the Lobo case and we give that a
8 trial of April 29th and you back out, A, a summary
9 judgment motion, which has to be filed 75 days before
10 the trial -- actually, 105 days, 30 days for the hearing
11 and then 75 days back.

12 So let's back out 105 days for the filing of
13 the motion. If you look at when expert disclosures and
14 all the evidence has to be gathered together and you
15 consider the fact that document production, as is
16 presently constituted, will not be completed until
17 middle of February.

18 If Mr. Singleton chooses to start taking
19 vegetation management depositions of people who made
20 decisions on whether or not the tree that contacted this
21 line was a hazard tree and should have been removed and
22 then trying to determine whether PG&E was negligent or
23 worse, if we don't have all the documents to have
24 digested by then, if we don't have the ability to
25 properly work up that case, then you're going to have

1 potentially a decision being made by a judge that sits
2 in Sacramento on a record that is not complete that then
3 will serve as what?

4 No instruction whatsoever because we wouldn't
5 have had the ability to fully develop the evidence so
6 that it could be marshaled to oppose the summary
7 judgment motion.

8 The impacts here are enormous and that's why,
9 although Mr. Singleton may want to have his own
10 discovery, there's nothing to suggest that that
11 discovery and the timing will coincide with all of the
12 other discovery that needs to be done to get a properly
13 developed negligence or, worse, punitive damage case so
14 that if a decision is made, it has some persuasive
15 influence on the rest of us.

16 That's why, Your Honor, in the Butte case we
17 as leadership made sure that before preference motions
18 were filed, appropriate discovery had been done, so as
19 not to prejudice the rights of everybody else.

20 So the concern that is expressed here -- and I
21 want to echo soundly, is that I could see what would
22 happen if a deposition was prematurely noticed and we
23 believe that if all the documents and discovery wasn't
24 developed so we could take an effective deposition, PG&E
25 is going to claim you only get one bite of this apple.

1 We're not bringing this same person back to be deposed
2 three months from now, just because you haven't
3 completed your work. It got noticed in the Lobo case,
4 you take your questions, but we're not going to have
5 duplicative discovery and more discovery going on from
6 the same witness.

7 So it causes complete disruption of the
8 orderly process of how we pursue this case.

9 The McGhan case that was cited in the CMC
10 statement had some very important language that I think
11 really is instructive for everybody. There may be some
12 delay that impacts some cases, but when you have a
13 coordinated proceeding, really, the goal line is what is
14 in the best interest for resolution on behalf of
15 everyone? We shouldn't sacrifice one case to the
16 detriment of thousands of others that are pending when
17 the instructive value of that case is not going to
18 provide anything that can be useful in an overall
19 process of resolution.

20 We interject conflict, we interject perhaps
21 differing decisions, and we create chaos in an otherwise
22 process that requires an enormous amount of coordination
23 and preparation to do this effectively.

24 THE COURT: Well, even under your proposed
25 plan, the CMO, we could have a situation in which an

1 attorney goes to leadership and says I need to press my
2 preference motion; leadership says, this -- this is not
3 a great time. It would be good if we did this in five
4 months from now, and the first attorney says, my client
5 is dying, my client is going to be dead in two and a
6 half months or whatever and I need to press this. I
7 disagree with you, leadership, I'm going to go to the
8 court.

9 Judge, here's the motion, the requirements for
10 36 are met, and the judge thinks that postponing the
11 hearing or continuing the hearing is sort of perhaps a
12 back way around trying to avoid the statutory mandate,
13 and so ends up granting the motion.

14 This problem -- we can't get away from this
15 problem. There are going to be situations and this --
16 we may have run into the first one now, but there are
17 going to be situations, are there not, in which the
18 needs of this one case to get maybe a PMK depo from PG&E
19 on forest management or something, that has to happen
20 and the way -- one way to solve that problem, which is
21 to say the problem that normally PG&E only has to give
22 up their witness once and can basically tell the rest of
23 the plaintiffs, arguably, this was your shot, is to make
24 it clear that in these sort of unique circumstances,
25 PG&E may have to produce that witness again.

1 Because we don't want to have a situation in
2 which everybody feels at next week's forest management
3 PMK deposition of PG&E that this is their only chance.
4 We don't want to have a situation in which everybody
5 feels they have to show up. That's not fair. It's not
6 fair to anybody else in these cases. You don't have the
7 documents yet. You don't have your questions yet for
8 these people.

9 But one attorney has decided that he does have
10 his questions and he does have the data that he needs,
11 so maybe the way to handle it is let him go ahead and
12 have that PMK, and PG&E may need to produce the witness
13 again down the road, to make that clear in writing.
14 Takes care of at least that problem.

15 What I'm suggesting in a broader sphere is
16 that there's actually no good answer to any of this;
17 there's no answer.

18 For example, you talk about summary judgment
19 motions. I have tried to find an appellate case that
20 considers two conflicting statutory mandates. The first
21 mandate is the preference that you have 120 days to go.
22 The second is -- and there's some authority to this --
23 that parties have a statutory right to file a summary
24 judgment motion. For example, there's the case that
25 says something like if you have a newly-entered party

1 and they come in, but the trial date when they come in
2 is so close that they don't have a right to make a
3 summary judgment motion, they don't have the time to
4 make it. The judge is supposed to continue the trial
5 date in deference to the statutory right to make a
6 summary judgment motion.

7 But we have -- these two statutes block each
8 other. They're inconsistent with each other. There
9 isn't going to be time in the Fowler case to make a
10 summary judgment motion. It's impossible. The work --
11 you can't get the discovery done in the next week or two
12 in time to prepare the papers so that the summary
13 judgment motion will be heard 30 days before trial and
14 still have the 75- to 80-day notice period for summary
15 judgment motion.

16 It can't happen. It just can't happen. So
17 there's a whole bunch of things that kick in once we've
18 a preference motion. Once it's granted, a whole bunch
19 of rights just get wiped out as a result of this. This
20 is the imperfection of a trial that goes to trial
21 because of a preference motion. People don't have the
22 evidence they need, they don't have the discovery, they
23 don't have time to get everything done.

24 Especially in cases like this where there's
25 some document-intensive situations, they don't have time

1 to make summary judgment motions, they don't have time
2 to do any of this, so it's an impossible situation, and
3 I don't know how we're going to avoid these issues.

4 I think one way to do it is to give leadership
5 the first crack at trying to coordinate this, to go
6 through leadership. I want this deposition, I want that
7 deposition, I want to make this motion. See if there's
8 something that you can do, knowing everything that you
9 know about all the different cases and where you are.

10 And then, if there's no meeting of the minds
11 in terms of how to progress, the Mr. Singletons of the
12 world will perhaps have to be allowed to bring the issue
13 to the Court and sometimes just move forward on a
14 deposition, for example, that otherwise wouldn't have
15 taken place.

16 What do you think about that?

17 MR. PITRE: Well, if that's the case, I think
18 we've set ourselves up for chaos, Your Honor, to be
19 quite candid.

20 THE COURT: How does one avoid that?

21 MR. PITRE: Certainly, Your Honor, you have
22 the power, because under 1504 the Court has the right to
23 manage this as a coordinated proceeding and it
24 understands as the McGhan case stated, is that there are
25 going to be some delays to some people because the

1 overall goal is resolution of the entirety.

2 And here's what I want to call the worst case
3 scenario: There's 17 fires. Lawyers are emboldened by
4 the fact that I go through a process, leadership says we
5 can't do it, so now what I want to do is I want to have
6 a case tried in all 17 fires and I want to do this in
7 six different counties.

8 Now what we've done, through the guise of a
9 preference motion, is we've completely disintegrated
10 what we all said at the beginning, the first day we came
11 in before this Court and everybody was here and said we
12 all agree the cases should be coordinated because there
13 are common issues that apply across the board.

14 Well, what we would do then is we would invite
15 15, 20 different cases, taking place all within 150 days
16 because I can see what's going to happen, Your Honor, is
17 people are going to be encouraged. They're all going to
18 find preference cases and say, look it, I don't have to
19 go through this protocol because leadership is never
20 going to agree that my fire is more important because my
21 client has an illness.

22 So now we have a bunch of cases before you or
23 the next judge. They use this decision as precedent and
24 they all say I want my day in court in Nevada County, in
25 Sonoma County, in Napa County, in Lake County.

1 Now we've created nothing but chaos. You
2 can't have coordinated proceedings because everybody has
3 a different idea. You've got the pole cases. You have
4 line slap cases. You've got tree line contact cases.
5 Now we've just destroyed a coordinated proceeding.

6 THE COURT: So you think 1504 sort of trumps
7 section 36?

8 MR. PITRE: Absolutely. Absolutely.

9 And there's suggestion of that in the Abelson
10 v. National Union case that was cited, I believe, by
11 Mr. Singleton in his briefs, where, you know, an issue
12 had come up and I know it because it was decided against
13 our firm, where we were trying to use -- there were a
14 number of elderly people who had been the victims of a
15 financial fraud.

16 And what the court wanted to do is take one
17 group of cases and the findings from that case and apply
18 it to hundreds of other cases that were set because
19 there were a number of elderly people, all of which
20 concerns were they weren't going to make it.

21 You know, the trial court said, well, I'm
22 going to say that the findings in trial number one on
23 the test cases are going to apply to all the rest of the
24 cases and I'm going to apply a limited collateral
25 estoppel. The court of appeal said, no, you can't do

1 that.

2 So there was an issue that came up and the
3 issue that came up that I'd ask the Court to take a look
4 at is whether under 1504, which I believe it can, the
5 Court can look at the interests of the overall
6 management of the cases in light of what we see as
7 CCP 36(a) and decide that the overall interests, whether
8 the Court wants to take it as does this client have a
9 substantial interest in the overall proceeding, the one
10 preference case, and looking at substantial interests in
11 the context of a coordinated proceeding -- I've seen
12 some courts go that route.

13 I've also seen some courts take the route that
14 1504 and their inherent ability to manage cases in a
15 coordinated proceeding trumps that.

16 So I would just suggest that one of the ways
17 to avoid the dilemma really is what Mr. Baghdadi said,
18 which is to have the Court's ruling on the 36 issue for
19 the Fowler decision continued until we can go through
20 the process that we have laid out in CMO number six and
21 then be able to look at what that appears to be in the
22 context of all people who, similarly, like Ms. Fowler,
23 have a legitimate right to a preference trial, and then
24 decide how are these cases going to be managed in the
25 overall context of giving everybody that same right if

1 that's something that the Court is inclined to do.

2 Because I think, one, it sends a message to
3 everybody that there is a process in a coordinated
4 proceeding that has to be followed and you cannot on
5 your own take it on yourself to devise your own plan;
6 two, it allows everybody who's in the same boat who has
7 the right to a preference motion to be able to have
8 their day in court on an expedited basis, whatever that
9 may be, so there's fairness that's uniform; three, it
10 gives leadership for the plaintiffs and PG&E the ability
11 to sit down and then say, okay, folks, we had a plan
12 without preference. We need to revise the plan. We
13 need to figure out a better way to get this stuff done
14 on a better basis and start to understand a revised
15 model because the way it is now, it will be chaos in
16 trying to get depositions organized, what documents get
17 produced first, what documents get produced last, whose
18 deposition takes precedence.

19 You can't do that, Judge. There's got to be a
20 plan, and the plan to, to me, would be as follows: You
21 take the preference cases, you find out how many we
22 have -- do we have 30, do we have 50, or do we have a
23 hundred?

24 How many fires are impacted? If only a subset
25 of those fires are impacted, then let's forget about

1 discovery in the other cases. Let's focus on the fires
2 that are at hand and let's devise a plan for getting
3 those done.

4 Of those fires, how many are tree line
5 contact, how many are pole, how many are something else,
6 what discovery is necessary?

7 Now we come at this Court or whoever follows
8 you with a better organized plan on how things can get
9 done and you decide on trial dates that work; because
10 I'm not sure that this Court or whoever follows you
11 wants to set trials that will all be going at the same
12 time, 150 or 180 days from the filing of the next wave
13 of preference motions.

14 I don't think PG&E is going to go along with
15 that. Maybe they will, but it gives the Court a better
16 idea and the parties and counsel to put together an
17 effective plan; or else we have a bunch of what I want
18 to call just wild mavericks all going out and doing what
19 they want to do because they say, well, it's my decision
20 on behalf of my client that needs this discovery to go
21 first.

22 And that just can't go on, Your Honor.

23 THE COURT: Thank you.

24 MR. PITRE: Thank you, Your Honor.

25 THE COURT: Let me just make sure I've heard

1 from other people first.

2 Is there anybody else at plaintiffs' table who
3 would like to speak?

4 Would PG&E like to be heard?

5 MS. HERNANDEZ: Your Honor, I would just echo
6 what Mr. Pitre and Mr. Baghdadi said and the Court's
7 concerns if you let the -- as you said -- what you said
8 multiple times, preference motions are complicated in a
9 coordinated proceeding, and there might be times that
10 you actually have to move forward because of the
11 statutory right with some trials, but that is quite
12 different from having a subset of plaintiffs just
13 separate themselves from the coordinated proceedings.

14 That just leads to inefficiency. It leads to
15 the coordinated proceedings just being debunked. But
16 most importantly, actually, the piecemeal discovery
17 requests to PG&E is just prejudicial.

18 The process that you actually put in place in
19 CM01 where all coordinated discovery was going through
20 leadership has actually been working. Mr. Singleton got
21 up here and said that he needs to actually be the one
22 who directly requests discovery from PG&E because
23 otherwise his client will be prejudiced. That's not
24 true.

25 As of today the leadership has served us with

1 100 document requests specifically to Lobo, 30
2 interrogatories, and 40 RFAs.

3 And if Ms. Fowler continues to have
4 Lobo-specific requests, they can still go through
5 leadership. Like you said earlier today, to the extent
6 that Ms. Fowler feels that there's some critical
7 discovery that's not happening through leadership, that
8 could be raised directly with the Court to no prejudice
9 to her.

10 So I don't think that Mr. Singleton has made a
11 showing that he's being disadvantaged in any way by not
12 dealing directly on discovery with us.

13 THE COURT: Thank you very much.

14 Yes, sir.

15 MR. SINGLETON: Thank you, Your Honor.

16 Mr. Petri talked about things that are
17 suggested in the McGhan case. We're very fortunate
18 because this particular statute, 36(a), is not one that
19 we have to guess at what the legislature intended or at
20 how the court of appeal is going to interpret it in
21 complex cases.

22 Fortunately, there are several cases that
23 directly refute the suggestions made by plaintiffs'
24 counsel that the Court has discretion to delay or to do
25 anything else.

1 Let me read just a couple of things that the
2 court of appeal had said. This is from the Koch-Ash,
3 case. Madam Reporter, that would be K-O-C-H, dash,
4 A-S-H.

5 The appellate court issued the writ holding
6 section 36(a), quote, is mandatory and absolute in its
7 application and does not allow a trial court to exercise
8 the inherent or statutory general administrative
9 authority it would otherwise have, close quote.

10 That was a decision that was made in a complex
11 case, Koch-Ash.

12 Now, the Koch-Ash court goes on to say, quote,
13 if trial courts or, in this case, plaintiff counsel
14 believe that certain exceptions to section 36 are
15 necessary in complex consolidated actions, their remedy
16 lies in persuading the legislature to amend the absolute
17 language of section 36, close quote. That is at page
18 699. The preceding quote was at page 698 in Koch-Ash.

19 This is not just Koch-Ash. For example,
20 Swaites, S-W-A-I-T-H-E-S, says, quote, mere
21 inconvenience to the court or to other litigants is
22 irrelevant. The trial court has no power to balance the
23 differing interests of opposing litigants in applying
24 the provision, close quote.

25 The provision in that case being section 36.

1 Now, Mr. Petri correctly points out in the
2 Abelson case, which is A-B-E-L-S-O-N, which is cited in
3 our papers on page 4, line 21, the court took advantage
4 of the fact that a preference case had been filed and
5 said, in addition to that, we're going to go ahead and
6 put in other cases so that there's more than one case
7 being tried.

8 We certainly have no objection if the Court
9 wants other cases from the Lobo fire to be tried along
10 with Ms. Fowler's. That would be what Abelson says, but
11 Abelson certainly does not stand for the provision that
12 the court may say, I'm going to delay a preference trial
13 until such time as other cases are ready.

14 Respectfully, I was also in the Butte case.
15 I'm also a member of leadership in Butte. And that is
16 not what happened in Butte. What happened in Butte is
17 people filed their preference motions, court granted
18 them, and there were two different dates set. One was
19 for preference cases and the other was for a bellwether
20 case that would proceed -- I believe it was 30 days, it
21 might have been six weeks -- after the preference cases
22 were done. That was how the Butte case was handled.

23 I want to very briefly just touch on something
24 the Court said because the Court said something that
25 struck a chord with me when it said if an attorney has

1 tried to go through leadership and has been unsuccessful
2 for whatever reason -- it could be leadership's fault,
3 could be my fault -- for whatever reason is
4 unsuccessful, the Court can -- I'm sorry, the attorney
5 can then come to the Court and say, I need relief.

6 That's where I am now. We have been asking.
7 We have been pushing on Lobo for a long time. We've
8 been trying to get the reports. We have been the ones
9 pushing this for seven months and we've been successful
10 so all we're asking is we think seven months of meeting
11 and confer is long enough. We would like to be able to
12 file a motion to compel so that we can get the Cal Fire
13 report and an inspection of evidence in Lobos so that
14 our experts can be ready so that they can get meaningful
15 depositions, as PG&E is certainly entitled to.

16 Thank you very much, Your Honor.

17 THE COURT: Thank you, sir.

18 MR. PITRE: I will be 30 seconds, Your Honor.

19 The choice of language when we're looking at
20 this issue of preference motions and the Court's ability
21 to manage is very important, and I know that this Court
22 is a student of looking at cases.

23 The word complex case, consolidated case, and
24 coordinated cases have a very important meaning. The
25 cases that were just cited to you occurred in the

1 context of a complex designated case, which His Honor
2 sits in complex, as well as a consolidated case. No
3 case has suggested in a coordinated proceeding where one
4 has thousands of individuals that are impacted that
5 CCP 36 trumps, and that's the distinction.

6 That's the only thing I wanted to say,
7 Your Honor.

8 THE COURT: Thank you, sir.

9 Well, let me ask one question about -- let's
10 go directly to the proposed orders. I don't know if you
11 have originals to leave off here to be signed. Somebody
12 does.

13 MR. SKIKOS: (Indicating.)

14 THE COURT: Thank you, Mr. Skikos.

15 But I just have, really, one question on
16 number five.

17 First of all, number five, you suggested that
18 I sign off on your stipulation as opposed to -- well,
19 you've suggested I sign off on a stipulation and then
20 also sign the order itself. I think you just want me to
21 sign the order itself, number five.

22 MR. BAGHDADI: Yes, Your Honor.

23 THE COURT: I don't have any particular
24 questions on five.

25 One question, which was sparked by a comment

1 in Mr. Singleton's papers, is to look at CM06, paragraph
2 four.

3 And Mr. Singleton's comment on paragraph four
4 was he's not sure what kind of a questionnaire this is
5 and he's not sure if you're going to be asking him to
6 present more information than otherwise would be
7 normally presented in the context of a preference
8 motion. In other words, how much -- in part, how much
9 of a burden is this, how relevant is this?

10 What sort of questionnaire is this that's
11 being referred to in paragraph four?

12 MR. SKIKOS: I'll deal with that.

13 First, with respect to the questionnaire
14 itself, we had a preference committee back in August.
15 Mr. Terry Singleton was on it.

16 We presented the original questionnaire back
17 on August 14th. The questionnaire that is proposed is
18 mirrored off of 36, and it was sent to all counsel,
19 including all Singleton attorneys, who receive all
20 counsel emails, on October 22nd. On October 29th again,
21 so everybody has seen it, and I have the emails.

22 However, the questionnaire itself, again, is
23 just a mirror of 36. It is not substantively different
24 other than it hits a lot of the topics, including what
25 fires are involved, et cetera.

1 I have a lot of other things to say, but that
2 answers your question.

3 THE COURT: What else did you want to say?

4 MR. SKIKOS: Well, I think, first, it's
5 regrettable that there's a potential change in judges,
6 because we can build on what we have built on in other
7 cases and in this case.

8 And in this case we have built a series of
9 case management orders and a process that has been
10 successful in 20-something other JCCPs, which is the
11 plaintiff lawyers do things by collaboration and by
12 consent.

13 We spent four months -- four months working
14 together with 50 law firms, trying to put together a
15 preference plan that can be protected from arguments
16 from the defense.

17 I am very concerned that there is more going
18 on here than simply one preference motion for one
19 plaintiff. Every -- in one week, I had 30 preference
20 cases sent to me under the criteria that was presented
21 in the preference motion on the Fowler case.

22 And Your Honor and I dealt with this in
23 Reglan, where we had a mortality rate of 26 percent in a
24 very short period of time.

25 In Gadolinium, which was a predecessor to you,

1 but you had one of the trial cases, the gadolinium
2 mortality rate was unbelievable. It was a hundred
3 percent.

4 We as a plaintiff bar had to work together to
5 deal with a horrible situation, which is a sick and
6 dying population, a need to complete liability
7 discovery -- and in this case a need to complete
8 liability discovery across fires -- a need to make sure
9 that the litigation is successful.

10 And what's happening here is a little
11 nerve-racking. When PG&E puts in its brief -- they
12 didn't hide it. They put it in their brief. They said
13 the Singleton group has insisted on pursuing this path
14 of inefficiency while offering to drop it entirely,
15 including all preference motions, if PG&E will agree to
16 mediate these plaintiff claims separate from everybody
17 else's claims.

18 Whether that is true or false, a litigation
19 plan has to be based on the collaboration of all the
20 lawyers. It has to be based on not a mediation plan for
21 your own clients, especially in a case like this, but a
22 litigation plan that is ultimately going to be
23 successful for all plaintiffs.

24 Now, at the very start of this litigation -- I
25 see Mr. Terry Singleton here. At the very start of this

1 litigation, I reached out to Mr. Terry Singleton and
2 Mr. Tom Tosdale and started setting up sporadic calls to
3 work with each other, to collaborate with each other, to
4 come up with a game plan.

5 I am concerned and I'll say this on the record
6 that the plan that has been put in place benefits PG&E,
7 and I want to make sure that nothing that happens here
8 prejudices the rights of the 3,000 people, my hometown,
9 other leaders' hometowns, to the detriment to all
10 plaintiffs.

11 And the fact that they put in the brief that
12 this litigation plan is conditioned upon some mediation
13 plan, well, here they -- we have spent the entire
14 hearing, two hours, dealing with plaintiff lawyers.
15 Why? Why is this one case and other cases similarly
16 situated -- when we have one in our own law firm in
17 which the plaintiff was dying of cancer, she fled to our
18 house and lived with us until she died.

19 Every single plaintiff, okay, if they have
20 people who are sick and dying, PG&E can settle those
21 individual cases, but don't make a litigation plan that
22 hurts the entire litigation or potentially hurts the
23 entire litigation based upon a mediation decision.

24 So I say that only because it seems odd that
25 in 20-something JCCPs, this group of lawyers, Mr. Petri,

1 Mr. Robinson, Ms. Cabraser, all of these lawyers who
2 have run all these JCCPs, have done this collaboratively
3 and without conflict over CCP 36 because we understand
4 the importance of that statute and preserving that
5 statute against the DRI and against the Wall Street
6 interests, who want to get rid of it, because that's
7 what's really going so, we have to work together and
8 collaboratively.

9 That's all we're asking of Mr. Singleton.
10 That's all we are asking of his group, whatever is left
11 of it. We are asking everybody to work collaboratively
12 to make sure that the plaintiffs' interests in this
13 state are preserved.

14 And we can do that but we have to do that as a
15 team, so that's my point.

16 THE COURT: Thank you, sir.

17 MR. SINGLETON: Your Honor, if I may --

18 THE COURT: Very briefly. This will be the
19 last -- we're going to conclude our conference --

20 MR. SINGLETON: Understood. I wasn't going to
21 address it, but since Mr. Skikos brought it up, I do
22 want to say that is categorically false.

23 What happened -- and I wasn't going to say
24 anything, but since PG&E has put it in the brief, what
25 happened was this: I suggested that we attempt to

1 mediate Ms. Fowler's case as opposed to filing the
2 motion. PG&E decided they didn't want to do that.
3 That's absolutely fine. That's their right.

4 But the assertion that we agreed not to file
5 any preference motions, that we agreed to drop
6 everything in exchange for a mediation is simply false.
7 I don't know where it comes from.

8 THE COURT: Thank you.

9 I'm going to ask whoever has the original
10 copies of CM05 and six to leave them here before you
11 leave.

12 My plan now is to go off the record and pick a
13 date for the next CMC, but before I do that, is there
14 anything else anybody wants to raise?

15 (No response.)

16 THE COURT: Off the record.

17 (Discussion off the record.)

18 (Recess taken at 4:04 p.m.)

19 THE COURT: The next CMC has already been set
20 for January 2019 and the issues are submitted.

21 Thank you very much.

22 (Whereupon, proceedings adjourned at 4:04 p.m.

23)
24
25

1 State of California)
2 County of San Francisco)

3
4
5 I, Mary Ann Scanlan, California Certified Shorthand
6 Reporter No. 8875, do hereby certify:

7 That I was present at the time of the above
8 proceedings;

9 That I took down in machine shorthand notes all
10 proceedings had and testimony given;

11 That I thereafter transcribed said shorthand notes
12 with the aid of a computer;

13 That the above and foregoing is a full, true, and
14 correct transcription of said shorthand notes, and a
15 full, true and correct transcript of all proceedings had
16 and testimony taken;

17 That I am not a party to the action or related to a
18 party or counsel;

19 That I have no financial or other interest in the
20 outcome of the action.

21
22 Dated: January 9, 2019

23 
24 _____
25 MARY ANN SCANLAN CSR No. 8875

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